

APPEAL NO. 160494
FILED MAY 2, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 10, 2016, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); (2) the appellant (carrier) is not relieved from liability under Section 409.002 because of the claimant's alleged failure to timely notify the employer pursuant to Section 409.001; and (3) the claimant had disability beginning on November 17, 2014, and continuing through February 13, 2015. The carrier appeals the hearing officer's determinations of compensability, disability and timely notice to employer. The carrier contends that the evidence does not support the determinations made by the hearing officer. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

The claimant testified that he was injured when the golf cart he was driving was rear-ended by a gas picker vehicle driven by another employee. We note that the hearing officer incorrectly identified the date of the injury in the compensable injury issue listed in the decision and order. A review of the record reflects that the parties agreed that the date of injury in dispute was (date of injury). Additionally, the benefit review conference report lists the date of injury of the compensability issue in dispute as (date of injury). The hearing officer incorrectly lists the date of injury as November 14, 2014, in the Statement of the Case portion of her Decision and Order. We reform the compensability issue of the Statement of the Case to reflect the correct date of injury, (date of injury).

COMPENSABLE INJURY

The hearing officer's determination that the claimant sustained a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

TIMELY NOTICE TO EMPLOYER

The hearing officer's determination that the carrier is not relieved from liability under Section 409.002 because of claimant's alleged failure to timely notify the employer pursuant to Section 409.001 supported by sufficient evidence and is affirmed.

DISABILITY

In her discussion of the evidence, the hearing officer notes that the claimant testified he went to work for another employer in December of 2015 and worked for approximately two months. The hearing officer went on to state she found the credible and persuasive evidence to support that the claimant was unable to obtain and retain employment at his pre-injury wages beginning on November 18, 2014, and continued to December 26, 2014.

We note that at the CCH the parties agreed to modify the disability in dispute to read as follows: "Did the claimant have disability resulting from the claimed injury beginning on November 17, 2014, and continuing through February 13, 2015?" In Finding of Fact No. 5, the hearing officer found that: "During the period at issue [the] [c]laimant was unable to obtain and retain employment at his pre-injury wages beginning on (date of injury), and continuing through February 13, 2015." The hearing officer's finding of fact beginning disability on (date of injury), exceeds the scope of the disability issue as modified. The hearing officer determined in Conclusion of Law No. 5 that: "[the] [c]laimant had disability beginning on November 17, 2014, and continuing through February 13, 2015." The hearing officer's determination is not consistent with her discussion of the evidence. Accordingly, we reverse the hearing officer's determination that the claimant had disability beginning on November 17, 2014, and continuing through February 13, 2015. We remand the disability issue to the hearing officer for further action consistent with this decision.

SUMMARY

We reform the compensability issue of the Statement of the Case to reflect the correct date of injury, (date of injury).

We affirm the hearing officer's determination that the claimant sustained a compensable injury on (date of injury).

We affirm the hearing officer's determination that the carrier is not relieved from liability under Section 409.002 because of the claimant's alleged failure to timely notify the employer pursuant to Section 409.001.

We reverse the hearing officer's determination that the claimant had disability beginning on November 17, 2014, and continuing through February 13, 2015, and remand the disability issue to the hearing officer.

REMAND INSTRUCTIONS

On remand the hearing officer is to review the evidence in the record regarding disability and make a determination on the disputed period in dispute that is consistent and supported by the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge